

## REMARKS

This Paper and accompanying Request for Continued Examination are submitted in response to the Advisory Action dated May 9, 2006 and in further response to the final Office Action mailed March 1, 2006. This Paper is filed within three months of the final Office Action mail date, namely June 1, 2006. The Commissioner is hereby authorized to charge the RCE fee of \$790.00 and any additional fees to Deposit Account number 02-1818.

Claims 1-2, 4-13, 15-16, 18-20, 22, 24-26, and 28-37 are currently pending in this application. Claims 3, 14, 17, 21, 23, and 27 have been canceled. Claims 1, 20, 34, and 36 have been amended to more clearly articulate the claimed subject matter.

Claims 1-2, 4-13, 15-16, 18-22, 24-26, and 28-37 were rejected under 35 U.S.C. § 103(a) for allegedly being obvious over U.S. Patent No. 5,356,709 to Woo et al. (*Woo*) in view of U.S. Patent No. 5,849,843 to Laurin et al. (*Laurin*). Claim 3 was rejected under 35 U.S.C. §103(a) for allegedly being obvious over *Woo* in view of *Laurin* in further view of U.S. Patent No. 6,127,009 to Strassmann (*Strassmann*). Applicants respectfully disagree with and traverse these alleged rejections for the reasons set forth below.

Claim 3 has been canceled rendering moot the alleged rejection based on *Strassmann*.

*Woo* and *Laurin*, either alone or in combination, fail to teach or suggest a multiple layer non-PVC tubing having a four-component outermost layer (independent claim 1) or a five-component outermost layer (independent claim 20) as recited in the present claims. Rather, *Woo* discloses a multiple layer tubing having three layers—an outer layer 12, a tie layer 14, and a core layer 16. *Woo*'s outer layer 12 contains only two components (polypropylene copolymer blended with SEBS copolymer) and does not disclose a four/five component outermost layer as recited in claims 1 and 20 respectively. *Woo*, col. 3 lines 1-9, Figure 1. Indeed, the Examiner has admitted that *Woo* fails to disclose or suggest an outermost layer having an RF susceptible polymer or a second polyolefin as recited in claim 1. See Office Action dated March 1, 2006 at ¶7. *Woo*'s two component outer layer fails to disclose or suggest a four-component or a five-component outermost layer as recited in independent claims 1 and 20 respectively.

*Laurin* fails to fulfill the deficiency of *Woo* as no motivation exists to combine these two references. *Laurin* has no disclosure whatsoever directed to a multiple layer structure. A reference cannot disclose or suggest that which it does not have. In particular, *Laurin* cannot disclose or suggest a multiple layer tubing as *Laurin* completely lacks any disclosure whatsoever

regarding multiple layer structures. Consequently, no motivation exists to combine *Woo's* three layer tubing with *Laurin's* polymeric blend.

Assuming *arguendo* that motivation did exist (which it does not) to combine *Laurin* with *Woo*, such motivation would, at most, lead to a modification of *Woo's* tie layer 14 as admitted by the Examiner. See Office Action dated March 1, 2006 at ¶7. Indeed, *Woo's* tie layer and *Laurin's* four component blend, share three common components (*i.e.*, polypropylene, ethylene vinyl acetate and SEBS). If combinable, *Woo* and *Laurin* would lead to a modified tie layer. One of ordinary skill in the art would recognize that a tie layer is inherently not an outermost layer as the purpose of a tie layer is to bridge opposing incompatible layers. Thus, any alleged combination of *Woo* and *Laurin* would lead the skill artisan to a tie layer—a path divergent from the outermost layers as recited in independent claims 1 and 20, for example.

Moreover, no combination of *Woo* and *Laurin* discloses or suggests a multiple layer tubing having an outermost layer that includes 1) a first thermoplastic elastomer, and 2) a component selected from acrylonitrile butadiene styrene block copolymer, styrene ethylene butene copolymer, styrene acrylonitrile copolymer, cyclic olefin containing polymers and bridged polycyclic olefin containing polymers as recited in claim 20. Neither *Woo* nor *Laurin* has any disclosure whatsoever directed to this component combination. As each reference wholly lacks disclosure regarding this component combination, no combination of *Woo* and *Laurin* discloses or suggests the subject matter of claim 20.

### **CONCLUSION**

In view of the foregoing remarks, Applicants submit that claims 1-2, 4-13, 15-16, 18-22, 24-26, and 28-37 are in a condition for allowance and respectfully request notice of the same.

Respectfully submitted,  
BELL, BOYD & LLOYD LLC

BY 

Ted J. Barthel  
Reg. No. 48,769  
Customer No. 29200

Dated: June 1, 2006